1947. File No. O Extradition/47

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Legal DEPARTMENT
A BRANCH

~~Subject:~~

Opinions under the Extradition Act 1903 P 23 E

File No. O. Extradition/47
Std. Sectl. Slip 24 B'e.

393-A

CONTENTS.

Legal Department Vol. No. 0. Extradition/47.

O.No.	Comp.No.	Subject.	pages.
		Opinions under the Indian Extradition Act, 1903.	
1.	O.No. 6514 28-5-47.	Sec. 15 - Cancellation of warrant on the ground that persons have committed no offence.	1-6
2.		Memo. from H.E. the Crown Representative No. F.17(12)-ID/47 dated 24-7-47 reg. extradition.	7-9
3.	O.M. 9338 15-8-47.	Secs. 3,7 - Whether there is prima facie evidence to justify surrender of accused to Cambay State.	8-12
4.	O.M. 9346 8-10-47	Secs. 22(2)(b) Liability for loss of property in transit.	13-16.
5.	O.M.11273 26-11-47.	Sec. 10. Whether there is prima facie evidence justify surrender to Portguese Government at Goa.	17-20
6.	O.No. 12040 15-12-47	Secs. 7(1), 8 - Whether it is necessary for the Janjira State to make fresh requisitions for extradition.	21-23
7.	O.M. 13006 16-12-47	I.P.C. Sec. 302 - Whether there is prima facie evidence to surrender accused to Kolhapur State.	23-24

L.D.R.I.No. 6104/20-5-47.

Submitted.

2. Please see C.S.D. notes at ps. 29-33 ante and a copy of the petition dated 10-4-1947 from Mr. Manordas Panachand Parekh, at ps. 7-9 ante, praying that the requisition for extradition of certain persons under section 8 of the Indian Extradition Act should be refused on the ground that the merchants have committed no offence by exporting groundnut oil from Ranpur to Ahmedabad. It appears that in a test case filed, one Bania Ishwarlal Jivabhai and two others were prosecuted in the Court of the Dy. Political Agent and First Class Magistrate, Eastern Kathiawar Agency for contravention of Agency Notification No. 27, dated 8-4-1946 and the accused were convicted with a fine of Rs. 100/- each (p. 19-21 ante). The notification issued under rule 81(2)(a) of the Defence of India Rules as applied to Western India States Railway lands in Kathiawar, inter alia banned groundnut oil from being offered for transport or accepted by a Railway servant for transport or transported by rail in the said rail in the said railway lands in Kathiawar except under and in accordance with a permit issued by the Director of Food Supplies, Kathiawar. The D.M. Ahmedabad is of the view that as groundnut oil was booked from Ranpur, a railway station within the limits of the Ahmedabad District, to Ahmedabad City there was no contravention of the Agency's notification. This view appears to be correct, Ranpur being in the British territory, export of groundnut oil from Ranpur to Ahmedabad would not be a contravention of the notification in question although the consignment of oil passed through the railway lands in Kathiawar, because the notification does not prohibit

transit...

transit through the Kathiawar State Railway lands. Cf. the judgment of the Bombay High Court in Imp. V. Brijlal Sundarlal Pardesh, Crim. Revision Application No. 562 of 1943 - Misc. Cr./44 Pt. I p. 117). The best course therefore would be for this Government to cancel the warrant in such cases under section 15 of the Extradition Act, 1903 and discharge the accused.

Id/- P.S.Nadkarni
22-5

S.A.S.

Assuming that the facts of the case disclose an offence under Rule 81(4) is the offence extraditable ?

Id/- R.M.M.
23-5-47.

Mr. Nadkarni.

Submitted.

Please see Govt. letter dated 18-6-1943 (slip F) which refers to a notification dated 6-6-1940 wherein the Central Govt. have specified all offences against the D. of I. Act or Rules ~~xxxxxx~~ made thereunder to be extradition offences.

Id/- P.S.N.
23-5.

S.A.S.

The Agency Notification No. 27 of 8th April 1946 is not happily worded. It directs that none of the commodities mentioned in the second schedule thereto annexed shall be offered by a consignor or accepted by a railway servant for transport or be transported by rail in the Western India State Railway lands in Kathiawar, except and in accordance with a permit issued by the Director of Food Supplies. The words "offered .....or accepted..... for transport or be transported by rail in the said railway lands" would seem to indicate an intention to restrict the movement of these commodities within the Agency limits. It cannot be said, on a fair and reasonable construction of the notification, that it prohibits without necessary permit, the transport of those commodities by rail from a place outside Kathiawar to another place also outside Kathiawar, but through the railway lands in Kathiawar. In the latter case the commodities would merely pass through the said lands in transit. They cannot be said to have been offered or accepted for transport or be transported in the said lands. Moreover the merchants cannot in reason be charged with the contravention of an order which did not apply and to which no publicity was given in Ranpur.

The question whether the merchants concerned smuggled the oil from the state and whether they shuld be surrendered to the agency authorities stands on a different footing and can be considered in the light of evidence and on a reference made by the District Magistrate under section 8A of the Indian Extradition Act.

A.L.R.

R.L.A.

Id/- R.M.M.

26-5-47.

By their notification No. 27 dated 8-4-1936 at page 11 ante the Agency Authorities directed that "none of the commodities mentioned in the schedule hereto annexed shall be offered by a consignor or accepted by a railway servant for transport or be transported by Rail in the railway lands in Kathiawar except under and in accordance with the terms of a permit issued by the Director of Food Supplies, Kathiawar. What is prohibited by this notification is (i) offer by a consignor for transport (ii) acceptance by a railway servant for transport and (iii) transport by rail. The contravention of the notification in respect of the prohibition (i) or (ii) occurs at the place where the commodities are offered or accepted for transport and the question that these commodities after consignment pass through prohibited area by rail is immaterial. The Agency notification can have no extensive territorial application. If the place where the commodities are offered or accepted for transport by rail is in British India as is in the present case, no breach of the Agency notification can be deemed to have been committed. Consequently neither the merchant of Ranpur nor the Station Master of Ranpur a place within British India-can be lawfully prosecuted for the breach of the Agency notification.

The prohibition (iii) has no doubt been contravened in the present case inasmuch as the commodities were transported by rail in railway lands in Kathiawar; but by such transport neither the merchant of Ranpur nor the Station Master of Ranpur committed the breach of the Agency notification and if at all any one has done if it is the Railway.

By their notification No. 27 dated 8-4-1946 the Agency Authorities directed that "none of the commodities mentioned in the Schedule hereto annexed shall be offered by a consignor or accepted by a railway servant for transport or be transported by Rail in the railway lands in Kathiawar except under and in accordance with the terms of a permit issued by the Director of Food Supplies, Kathiawar." The intention presumably was to prohibit the offer or acceptance in the railway lands. But on a plain and natural reading of the sentence it is quite clear that the words "in the railway lands" must be taken with the words "for transport by rail". If that be the correct interpretation, it would be an offence for a consignor to offer or for the railway servant to accept the commodity anywhere, outside the railway lands, i.e. at any railway station in British India, even if the consignment was intended for another railway station in British India, so long as it was to be transported only for a short distance in the Agency railway lands on its way to the ultimate destination. Ordinarily the notification could have no extra territorial application; and presumably the delegated authority under which the Agent purported to issue it would not have authorised him to create an offence out of an act committed outside his jurisdiction by a person living also outside his jurisdiction. The literal construction cannot, therefore, be adopted as the fair and reasonable construction, and therefore the true legal construction. The judgment in Criminal Case No. 111 of 1946 relied upon by the Director of Food Supplies rejects it in respect of the offer and the acceptance of the consignment. And for that same reason it must be rejected also in respect of the transport by rail. It was not illegal for merchants at Ranpur to send the commodity to Ahmedabad; and merely by reason of its transit through the railway area they cannot be said to have contravened the order. If adopting the literal construction it be said that the order prohibited

transit

through the Agency Railway areas without a permit, the answer would be "de minimis non curat lex". The object of the order was to conserve the stocks of the commodity in the Agency areas, and such transit is not opposed to that desired object. If the commodity was smuggled out of the Agency area before being brought to Kanpur, the proper course was to take action against those who so smuggled it. On these grounds, there should be no objection to stop the proceedings under section 15 of the Indian Extradition Act.

Id/- P.N.Lal.

Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 6514, dated the 28th May 1947.

Copy of Memorandum from Secretary to His Excellency the Crown Representative. No. F.17(12)-IB/47, dated the 24th July 1947 addressed to all Residents in States.

Extradition.

In continuation of Political Department telegram No.479-IB dated the 15th July 1947.

2. Political Officers form the hub of the existing extradition machinery. Extradition from States to British India and from British India to States passes through their hands as follows :-

(a) To States; The normal procedure is to obtain a warrant from the Political Officer under section 7(1) of the Indian Extradition Act, 1903. But this can only be done when the offence is an extradition offence, i.e. an offence named in the First Schedule of the Act. It should be borne in mind, however, that a Political Officer may at any time refuse to act under this section and inevitably refuses when he is not satisfied that there is a prima facie case. Alternatively section 9 may be used. And this is the only section applicable when the offence is not an extradition offence. The proviso to this section makes it obligatory to make such a requisition through the Political Agent, if there is one.

(b) From States. Extradition is governed by treaties and usage reciprocal to the British India law. Though hitherto requisitions for extradition have generally been made through Political Officers there is no legal bar to direct correspondence in the matter between States and Provinces. It rests of course with the State concerned to accept any requisition.

3. The withdrawal of Political Officers consequent on the lapse of paramountcy on or about the 15th August 1947, does not necessarily constitute a lacuna for;

(i) provided States agree, extradition from States can be arranged directly between the State and Province concerned.

(ii) for extradition to States section 9 of the Indian Extradition Act will be available though it will be impossible to use section7 unless the Act is amended. As regards section 9, it may be observed that when there is no Political Agent requisition may be made direct to the Provincial Government concerned, vide External Affairs Department Notification No. 67-X, dated 1st April 1939 entrusting the powers of the Central Government under section 9 of the Extradition Act to Provincial Government. The procedure under section 9 is however cumbrous.

(iii) Extradition between States continues without alteration.

4. If Political Officers continue to function in respect of Extradition from British India under the normal procedure, i.e. section 7(1), until they are withdrawn on August 15, 1947 warrants may be left unexecuted or, if executed, arrests and detention may be without authority. To avoid any such breakdown, and in order that extradition cases in the offices of Political Officers may not be left pending, the Crown Representative has already ordered that Political Officers shall refuse to entertain any further applications under section 7 o the Extradition act with effect from 20th July 1947 and shall close down pending cases with the utmost despatch. From that

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date until their departure Political Officers will function in accordance with the proviso to section 8 of the Act.

5. The question of amending the Act in order to provide for more expeditious exchange of offenders is under the consideration of the States Department.

6. It is requested that, if you see no objection, the State(s) concerned may please be informed of the decision in suitable terms. A copy of this memorandum is being forwarded to all Provincial Governments and Chief Commissioners for favour of necessary action.

No. 1560/46-1-I.

Political and Services Department,
Bombay Castle, 18th August 1947.

Forwarded with compliments for information and guidance to :-

All District Magistrates,

The Chief Presidency Magistrate,

2. The District Magistrates and the Chief Presidency Magistrate are authorised to correspond direct with the State Authorities in extradition matters. Special cases should, however, be brought to the notice of Government.

By order of the Governor of Bombay,

I.H. TAUNTON,

Chief Secretary to the Government of Bombay, Political and Services Department.

Copies forwarded with compliments for information to :-

The Commissioners of Divisions,
The Inspector General of Police, Poona,
The Commissioner of Police, Bombay,
All Deputy Inspector Generals of Police,
All District Superintendents of Police,
The Home Department,
The Legal Department.

The Resident at Baroda for the Western India and Gujarat States has made a requisition to Government for taking action under section 9 read with section 3 of the Indian Extradition Act, 1903 in the case of one Babu Jhava who is alleged to have committed at Vastava (Cambay State) an offence under section 7 of the Essential Supplies (Temporary Powers) Act XXIV of 1946 as applied to Cambay State.

Section 9 lays down the procedure to be followed when a requisition is made to the Central or the Provincial Government by or on behalf of any State (not being a foreign State) for the surrender of any person accused of having committed an offence in the territories of such State. The offence in respect of which the extradition is demanded must be an offence according to the law of both the states. But unlike section 7, it need not be an extradition offence. (see Muddiman; Law of Extradition P. 46). The procedure to be followed is that laid down in section 3 which requires a Magistrate having jurisdiction to inquire into the case. The letter from the Resident with its accompaniment was forwarded to the District Magistrate, Kaira for holding an inquiry under section 9 read with section 3.

On 7th August 1947 the District Magistrate reported to Goverment that the inquiry as directed had been held by the Taluka Magistrate, Matar, and that from the Statements recorded by him it was clearly proved that Babu Jhaver had exported 18 maunds of wheat from Vastana without permit. The paper have been referred to R.L.A. for advice whether there is prima facie evidence against the accused to justify his surrender to the Cambay State.

The accused is a resident of Baranta (Taluka Petlad) in Baroda State. The charge against him is that on 19-1-1947 he transported 18 maunds of wheat from the village of Vastana in Cambay State without the necessary export permit..

permit and thereby committed an offence under section 7 read with section 3 of the Essential Supplies (Temporary Powers) Act XXIV of 1946 as applied to that State. The story of the prosecution is that on the date of the alleged offence at about 10 P.M. Khodabhai Jethabhai, the Talati of Janor (Taluka Matar) saw the accused driving a bullock cart which was coming from the direction of Vastana. Having suspected illegal export, he stopped the cart and found that it contained wheat. He asked the accused for export permit but the latter could not produce it. The Talati therefore made a panchnama and produced the accused and the cart loaded with wheat before the Mamlatdar of Matar who recorded his statement. The accused is reported to have admitted before the Mamlatdar that he had removed the wheat without permit. He was released on bail and the case was referred to the Diwan of Cambay as the offence was committed in that State.

Six witnesses have been examined in support of the prosecution story. The direct evidence is that of Khodabhai Jethabhai the Talati of Janor who actually saw the accused arriving in a cart loaded with wheat from the direction of Vastana. He states that at about 10 P.M. on the date of the ~~ex~~ offence he had gone out to ease himself. While he was out he saw the cart arriving from the side of Vastana and stopped the cart and found that it was loaded with wheat. He asked the cartman to produce the export permit but he had none. The accused further stated before him that he had taken the wheat from Vastana and was taking the same to Baranta in Baroda State. Of the actual removal of the wheat by the accused from Vastana there is no evidence. The two witnesses from that village Viz. Ashabhai Motibhai and Gandabhai

Nathabhai...

Nathabhai merely state that they had heard from the village people that the accused was caught at Chanor for illegal transport of wheat. The other important witness is Ishwarbhai Punjabhai a clerk in the Mamlatdar's Court at Matar. He states that on 20-1-1947 the accused was produced with the cart before the Mamlatdar by the Talati of Jhanor. The Talati also produced the Panchnama made by him.. As the accused had no export permit he was released on bail and the wheat was taken in custody. The last two witnesses Raghuvir Chhotlal and Shekhumia Rustammia are Police witnesses. The Mamlatdar of Matar is reported to have recorded a Statement of the accused but it is not found among these papers.

The evidence of Khodabhai proves at least this much that the accused was found in possession of a cart loaded with wheat which was driven from the direction of Vastana and that he was not able to produce the required permit. The accused has made an extrajudicial confession before Khodabhai that he had brought that wheat from Vastana. That he had some previous connection with that village is shown by the evidence of the witnesses from Vastana who say that the accused 's wife belonged to that village and that he used to visit Vastana. At this stage it is not possible to say whether this evidence is sufficient to secure a conviction but that is a question into which the surrendering authority need not enter. It is possible however to say that there is some evidence on record to justify a trial of the accused for the alleged offence. Reply may be :-

There is sufficient prima facie evidence to justicy the surrender of the accused to the Cambay State.

Id/- R.M.M.
12-9-47

U.R. to P. & S.D. No. 9328 dt. 19-9-1947.

I Agree. Reply may be as at A

A.L.R. Id/-
R.L.A. 23.9

This may issue, but please verify the following point. The Extradition Act now speaks of requisitions only to the Central Goverment. Under what authority are the requisitions made to the Provincial Goverment?

Id/- P.M.Lad.
16-9

After issue the office should note on the point raised by the R.L.A.

Id/- R.T.Katarki,
17-9
Office.

L.D.R.I.No. 10969 dt. 22-9-47.

Submitted.

The facts in brief and so far as they are relevant to the question referred to R.L.A. for advice, are as follows :-

Two bullocks were stolen from a place within the Barwani State and were sold to two persons of the village Bomadi, District West Khandesh. As the stolen property was in British India the Political Agent in Malva requested the D.M., W.K., to surrender these bullocks to the First Class Magistrate, Silawad, Barwani State. In pursuance of this requisition from the Political Agent the bullocks were taken in possession by the 2nd Class Magistrate, Shirpur (West Khandesh) and were ordered to be sent to the court of the First Class Magistrate, Silawad (Barwani State) under Police escort. A Police constable and the two persons from whom the bullocks were recovered were detailed for the purpose. On the way to Silawad, one bullock was tired and could not move on. The party therefore went in search of a cart and on their return found that the bullock was missing. Only one bullock was, therefore, produced before the magistrate That magistrate has now requested that either the other bullock should be produced or the price thereof should be remitted to his court for disposal according to law.

The question for consideration of the R.L.A. is whether Govt. would be liable to pay the price of the bullock.

There is a reciprocal arrangement regarding extradition between the Barwani State and this Province whereunder persons and property are to be sent to the State or Administration to which they are to be surrended though no subsistance or transit charges on account of accused persons and property are to be recovered from either party (vide item 24 at p. 7 of P. & S.D. File 358(Having regard to this condition P. & S.D. considers that

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this Govt. will have to make good the loss as it is not in a position to deliver the property (vide P. & S.D.note at p. 13-14 ante). The Home Department, however considers that there is nothing in the reciprocal arrangement by which the Barwani State can claim the value of property for our failure to surrender it. H.D. states further that there is no doubt that ~~xxxxxxx~~ we are morally bound to pay the price of the property but it is not known whether we are bound to do so under any law. R.L.A. is, therefore, requested to clarify the point (vide pp. 15 -16 ante).

The obligation to send the property to the State concerned is an obligation created by the reciprocal arrangement and it is silent on the point that has arisen in the present case. If Goverment is unable to deliver the property on account of its loss during transit, no legal action will lie against this Govt. for compensation as such loss cannot be made the basis of any civil action. In the circumstances it is a matter for Government to decide whether payment should be made to the State on equitable grounds in lieu of the lost bullock.

Id/- N.P.Rege.
29/9

A.S. In law, no liability attaches to this Government for the loss of the bullock. As however the loss occurred in transit due apparently to the negligence of the escort provided by this Government, some compensation may be made on equitable grounds for the lsot bullock.

Id/- R.M.Mehta
29-9-47

A.L.R. I agree
Id/- R.T.Katarki
30-9

R.L.A.

Office of the H.L.A.

Liability for loss of property.

Indian Extradition Act, 1903.

In law, no liability attaches to this Government for loss of the Bullock. The only relevant section in the Extradition Act, 1903, is section 22(2)(b) which provides for making rules for the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies. Rule (1) of the Rules made thereunder empowers the Magistrate to exercise in any place in British India in respect of any property in the possession of the arrested person or of any other person which appears to such magistrate or police officer to have been the subject of or to be required for proof of the offence in respect of which the proceedings are taken etc. Under rule (2) such magistrate may send such property to the State to which such person is surendered and shall have in respect of any such property produced before him in such proceedings or returned by the aforesaid state, all the powers of disposal vested in a Court under the Code of Criminal Procedure, 1898, in respect of any property placed before it during an enquiry or trial. It is therefore clear that even apart from the reciprocal agreement the Magistrate to the Magistrate was bound to send to the State the bullock; but if such property is lost in transit, Government cannot be liable to reimburse the loss either to the State or the owner thereof even though it be proved that such loss was due to the negligence of the escort. (See Uma Parsad V. Secy. of State 17 Lah. 380 and H.L.A's opinion No.8274, dated 12-8-1947).

Id/- P.H.Lad, 7-10

Remembrancer of Legal Affairs.

U.R. to H.D.No. 9846, dated the 8th October 1947.

These papers relate to extradition proceedings against one Pandurang Naik Gaonkar alias Pandurang Desai whose surrender has been demanded by the Government of Portuguese India. The accused is alleged to have committed the following offences in Portuguese Indian territory viz., (1) desertion from the Portuguese Army, in which he held the rank of a first corporal; (2) theft of military stores belonging to Portuguese Government Viz. gun powder, cartridges, etc. and (3) escape from lawful custody. The P. & S.D. has forwarded the papers to the R.L.A. for advice whether there is sufficient prima facie evidence to justify the surrender of the accused to the Portuguese Indian Government at Goa.

There has been an understanding between the Indian Govt. and the Portuguese Govt. in India relating to extradition under which, the Indian Govt. is required to surrender to the Portuguese Govt. all Asiatic personnel other than Indians and native States subjects who have committed offences in Portuguese India and the Portuguese Government is required to surrender to the Indian Goverment all Asiatic personnel other than Portuguese subjects who may have committed offences in India (See pp. 37-41 of P. & S.D. File No. 14-II).

The accused Pandurang is not a national of the Indian Dominion nor a subject of a native state. He is a Goan Indian, i.e., a subject of the Portuguese Indian Govt. and that Government is therefore within its rights in demanding the surrender of the accused provided of course there is sufficient prima facie evidence to justify such surrender.

The...

The accused was arrested by the Karwar Police under section 54(7) of the Criminal Procedure Code on 30th March 1947 at the village of Majali within the Indian limits and was produced on the same day before the Sub-Divisional Magistrate, Karwar. The arrest was made on the information given by the Goa Police to the Karwar Police to the effect that the accused had committed an offence of theft in the Goa territory. The magistrate ordered his detention under section 23 read with section 10 of the Indian Extradition Act for a period of two months in the Karwar sub-jail, pending his extradition. He was however released on bail on 1-4-1947.

The papers which are said to constitute prima facie evidence against the accused were forwarded by the Goa authorities through the British Consulate at Goa to the Government of India and that Government has forwarded to the Bombay Govt. the papers received from the British Consultate. Those papers will be found at p. 65-127. The English translations from the original record are at from page 89 onwards. It is necessary to examine these papers to see whether they constitute any prima facie evidence against the accused.

The first document at p. 89 is a certificate from the Officer Commanding 1st Light Infantry which shows that the accused was born 11-6-1920 in Goa territory and joined the Portuguese Army on 17-4-1939 under the name of Pandit Naik Fotir which he was authorised to change to Pandurang Naik Gaokar. The next paper at p. 91-93 is a letter dated 9th April 1947 from the Chief of the Cabinet to the British Consul at Nova Goa forwarding certain documents alleged to constitute the prima facie proof against Pandurang and requesting for extradition of the

Office of the R.L.A.

The papers forwarded by the Portuguese Indian Government do not disclose any prima facie evidence justifying the surrender of the accused to that Government.

Id/- P.N.Lad,

Remembrancer of Legal Affairs.

U.R. to F. & G.D.No. 11378, dated the 26th November 1947.

On 16th May 1947 the Political Agent, Gujarat States Agency, forwarded to the District Magistrate, Kolaba, 13 warrants under section 7 of the Indian Extradition Act for the arrest and surrender of the accused named in the warrants wh were charged with having committed offences under sections 302 and 326 read with section 34 of the Indian Penal Code, in the territories of the Janjira State. The warrants have not yet been executed as the accused are not traceable; but the Political and Services Department have forwarded these papers to the R.L.A. for advice whether in view of paragraph 4 of the Goverment of India's letter No. F.17(12)-IB/47, dated the 24th Junly 1947, the execution of the warrants issued by the Political Agent would not now be without authority.

2. The Government of India's letter referred to by the Political and Services Department is addressed by the Secretary to H.E. the Crown Representative to all Residents in States and it lays down the procedure to be followed in extradition of offenders from and to British India after the 15th August 1947. The Political ~~xxxxx~~ Officers were withdrawn on the lapse of paramountcy on the 15th of August 1947. Therefore, after that date extradition from British India would be possible only under section 9 of the 'Extradition' Act (vide paragraph 3 (ii) of the letter referred to above). Paragraph 4 refers to extradition proceedings under section 7 pending at the relevant date. That paragraph is as follows :-

> "If Political Officers continue to function in respect of extradition from British India under the normal procedure, i.e. section 7(1), until ~~xxxxxx~~ they are withdrawn on August 15,1947, warrants may be left unexecuted or, if executed, arrests and detention may be without authority. To avoid any such break-down, and in order that extradition cases in the offices of Political Officers may not be left pending, the Crown Representative has already ordered that Political Officers shall refuse to entertain any further applications under section 7 of the Extradition Act with effect from 20th July 1947 and shall close

down

"down pending cases with the utmost desptach. From that date until their departure Political Officers will function in accordance with the proviso to section 9 of the Act.".

The Government of India, therefore, seems to have taken the view that warrants issued under section 7(1) before the 15th August 1947 by the Political Agent cannot be executed after that date and that in such cases the State concerned must make a fresh requisition for extradition under section 9 of the Extradition Act. That being so, the Janjira State will have to be requested to forward fresh requisitions under section 9 for the surrender of the accused.

Reply may be :-

Seen and returned. The view taken by the Politica and Services Department in paragraph 4 of its note of 27-10-1947 appears to be correct.

Id/- R.M.Mehta,
2-12-47.

A.L.R. Id/- R.T.Katarki
2-12

R.L.A.. Id/- P.M.Lad
13-12

U.O.R. to P. & S.D. No. 12040, dated 13-12-1947.

The Kolhapur State has demanded the extradition of Dattu Maruti Patil and five others for the offence of robbery under section 392 of the Indian Penal Code. The P. & S.Deptt. agreeing with the District Magistrate, Belgaum is satisfied that there is a prima facie case against the accused and yet it has forwarded the papers to the R.L.A. for advice. The facts of the case are briefly as under :-

2. The complainant Rajaram Maruti Khade had bought a touring Chevrolet Car bearing No. BYE. 2943 from Mr. Gundu Babaji Patil on 10-6-1947. The registration of the car was transferred to his name by the Regional Transport Officer, Belgaum. On or about 15-7-1947 when the complainant was driving from Nipani to Yamagarni, the car broke down. The complainant therefore, left the car in the field of one Houshetti, in charge of Houshetti's tenants. On 22-7-1947 the accused persons came to Houshetti's field and forcibly took away the car in spite of the protests of the persons who were left in charge of the car, and without the consent of the complainant. On these facts, they are charged with the office under section 392.

3. The complainant's ownership of the car is sufficiently established by the writing dated 10-6-1947 signed by the vendor Gundu Babaji Patil, by the vendor's statement dated 26-7-47 and by the book of registration showing that it was transferred to the complainant by the R.T.O. The statement of witness Shankar Hindurao Ghatge prima facie shows that the car was left by the complainant in his field when it broke down and that it was forcibly removed by the six accused who towed it away behind another car.

File p.37
File p. 41.
File p. 39.

4. As against this evidence the accused No.1 has made a statement which is to the effect that he and two others jointly owned the car, along with the

complaiant.

complainant. The removal of the car from the field is actually admitted by him but he contends that as ~~th~~ he was also a joint owner, he cannot be called a thief. That will be for the accused to prove at the trial. The evidence for the prosecution prima facie shows that the car belonged to the complainant and was forcibly removed from Houshetti's filed by the accused without his consent. Reply may be :-

"There is sufficient prima facie evi to justify the surrender of the accused offence under section 392 of the Indian Code."

Id/- R.M.Mehta,
13-12-47.

A.L.R. Id/- R.T. Katarki
13.12.

R.L.A. Id/- P.M. Lad,
13-12

U.R. to P. & S.D. No. 13006, dated 16-12-1947.

BM.
13.4.